IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 03.07.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM

and

The Hon'ble Mr. Justice V.DHANAPALAN

Habeas Corpus Petition No.361 of 2006

Ramamurthy ... Petitioner

Vs.

1. The State of Tamil Nadu,
rep. By its Secretary to Government,
Prohibition and Excise Department,
Fort St. George, Chennai-600 009.

2.The District Magistrate and
District Collector,
Krishnagiri Distirct,
Krishnagiri. ... Respondents

Petition under Article 226 of the Constitution of India for the issuance of a Writ of Habeas Corpus to call for the entire records leading to the detention of the petitioner's brother-in-law by name Ellukan @ Ellappan, aged 45 years under the Act 14/82, vide detention order dated 14.03.2006 on the file of the second respondent herein made in proceedings S.C.No.2/2006, quash the same and direct the respondents herein to produce the body and person of the said detenu before this Court and set him at liberty from Central Prison, Salem.

For Petitioner : Mr.P.Venkatasubramaniam
For Respondents : Mr.M.Babu Muthu Meeran
Additional Public Prosecutor

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O R D E R

(Order of the Court was made by V.DHANAPALAN, J.)

The petitioner, who is the brother-in-law of the detenu by name Ellukan @ Ellappan, who was detained as a 'Bootlegger' as contemplated under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982), by the impugned detention order dated 14.03.2006, challenges the same in this

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Petition.

2. Heard learned counsel for the petitioner as well as learned Additional Public Prosecutor for the respondents.

3. At the foremost, learned counsel for the petitioner submitted that there is enormous delay in disposal of the representation of the detenu, which vitiates the ultimate order of detention. With reference to the above claim, learned Additional Public Prosecutor has placed the details, which show that the representation of the detenu dated 27.03.2006 was received by the Government on 28.03.2006 and the remarks were called for on 29.03.2006. The representation of the detenu was received from the Government by the Collectorate on 24.04.2006 and the parawar remarks were called for from the Sponsoring authority on 02.05.2006 and the remarks were received from the sponsoring authority on 22.05.2006 and the report was sent to the Government on 24.05.2006. The remarks were received by the Government on 31.05.2006 and thereafter, the file was submitted on 01.06.2006 and the same was dealt with by the Under Secretary and Deputy Secretary on the same day i.e. on 01.06.2006 and finally, the Minister for Prohibition and Excise passed orders on 02.06.2006. The rejection letter was prepared on 05.06.2006 and the same was sent to the detenu on the same day i.e. on 05.06.2006. As rightly pointed out by the learned counsel for the petitioner, though the remarks were called for on 29.03.2006, the same was received by the Government only on 31.05.2006 and there is no explanation at all for taking time for sending the remarks belatedly. Here again, though parawar remarks were called for from the sponsoring authority on 02.05.2006, the remarks were received from the sponsoring authority by the Collectorate only on 22.05.2006 and there is no explanation at all for sending the remarks to the Collectorate belatedly. In the absence of any explanation by the person concerned even after excluding the intervening holidays, we are of the view that the two spells of delay, viz., between 29.03.2006 and 31.05.2006 as well as 02.05.2006 and 22.05.2006, are on the higher side and in the absence of proper explanation by the persons concerned, the delay has prejudiced the detenu in considering his representation. On this ground, we quash the impugned order of detention.

4. In the matter of preventive detention, while dealing with Article 22 (5) of the Constitution of India, the Supreme Court has laid down an ordained principle, particularly in matters whe re the detenu has an independent constitutional right to make his representation to the authority concerned, to whom the detenu forwards his representation to consider the same within a reasonable time limit. It is the object of Article 22(5) of the Constitution of India that the representation of a detenu whose liberty is in peril and depraved should be considered and disposed of as expeditiously as possible. Otherwise, his continued detention will render itself impermissible and invalid as being violative of the constitutional obligation enshrined in Article 22(5) of the Constitution of India and if any delay occurs in the disposal of a representation, such delay should be explained by the appropriate authority to the satisfaction of the Court.

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5. It is relevant to point out here a decision of the Constitution Bench of the Supreme Court reported in 1970 (1) SCC 219 (Jayanarayan Sukul V. State of West Bengal), in which it is held as follows:

> "The reason for immediate consideration of the representation is too obvious to be stressed. The personal liberty of a person is at stake. Any delay would not only be an irresponsible act on the part of the appropriate authority but also unconstitutional because the Constitution enshrines the fundamental right of a detenu to have his representation considered and it is imperative that when the liberty of a person is in peril, immediate action should be taken by the relevant authorities."

6. Further, the Supreme Court, in the decision reported in (1990) 3 SCC 148 (Mahesh Kumar Chauhan alias Banti Vs. Union of India & Others), while dealing with a preventive detention case, has observed as under: (para 20)

> "Except merely mentioning that the representation was forwarded to the concerned sponsoring authority on August 25, 1989 and the comments from the sponsoring authority was received by the Department on September 11, 1989, there is absolutely no explanation as to why such a delay had occurred. This undue and unexplained delay is in violation of Article 22(5) rendering the detention order invalid."

7. It would also be useful to refer to the decision of the Supreme Court reported in (1989) 3 SCC 173 (RAMA DHONDU BORADE VS. V.K.SARAF, COMMISSIONER OF POLICE), in which the Supreme Court has observed as under: (paras 16 to 18)

> "A representation of a detenu whose liberty is in peril should be considered and disposed of as expeditiously as possible; otherwise, the continued detention will render itself impermissible and invalid as being violative of Article 22(5). If any delay occurs in the disposal of a representation, such delay should be explained by the appropriate authority to the satisfaction of the Court. In case the appropriate authority is unable to explain personally the delay at various stages, then it will be desirable - indeed appropriate - for the concerned authority or authorities at whose hands the delay has occurred to individually explain such delay. In absence of any explanation, Court cannot wink at or skip over or ignore such an infringement of the constitutional mandate and uphold an order of detention merely on the ground that the enormity of allegations made in the grounds of detention is of a very serious nature as in the present case"

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8. In the light of the above discussion and in view of the fact that the rulings of the Supreme Court cited supra are squarely applicable to the facts of the present case and as there was an unexplained delay viz., between 29.03.2006 and 31.05.2006 and between 02.05.2006 and 22.05.2006 respectively, on the part of the sponsoring authority as well as the detaining authority in considering the representation of the detenu, we quash the impugned order of detention.

9. Accordingly, the Habeas Corpus Petition is allowed and the impugned order of detention is set aside. The detenu is directed to be set at liberty forthwith from the custody unless he is required in some other case or cause.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

1.The Secretary to Government, State of Tamil Nadu,Prohibition and Excise Department, Fort St. George, Chennai-600 009.

2.The District Magistrate and District Collector, Krishnagiri District, Krishnagiri.

3. The Superintendent, Central Prison, Salem.
(In duplicate for communication to detenu)

4. The Joint Secretary to Government, Public (Law and Order)
Fort St. George, Chennai-9.

5. The Public Prosecutor, High Court, Madras.

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HCP. No.361 of 2006
03.07.2006

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